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WILLS—CHARGING LEGACIES ON REAL ESTATE—EXTRINSIC EVIDENCE TO SHOW INTENTION.—*ELLIS v. MEGIE* (1916) 113 N. E. (N. Y.) 800.—A testator bequeathed legacies greatly exceeding the amount of his personal property, as he knew at the time he drew the will. *Held*, that these legacies were a charge on the undivided real estate, and that extrinsic evidence was admissible to show the testator's intention that they should be such a charge.

Unless legacies are charged on the real estate by the will, either in express terms or by clear implication, the personal estate is not only the primary but the only fund for their payment. 40 *Cyc.* 2011; *Post v. Moore* (1905) 181 N. Y. 15; *Taylor v. Dodd* (1874) 58 N. Y. 335; *Wentworth v. Read* (1897) 166 Ill. 131. In determining whether the real estate has been charged, a will is not to be construed by anything dehors, when there is no latent ambiguity. *Heslop v. Gutton* (1874) 71 Ill. 528; *Wentworth v. Read*, *supra*; *Duvall's Estate* (1892) 131 Pa. St. 176. A charge of legacies on the "estate" of the testator is generally construed as charging them on the realty in case of a deficiency of personalty, unless there is a contrary intention manifest. *In re Lloyd's* (1896) 174 Pa. St. 184; *contra*, *Todd v. McFall* (1899) 96 Va. 764. In such cases extrinsic evidence is admissible to show the testator's intention. *Davidson v. Coon* (1890) 125 Ind. 497. But where the testator directed that a certain legacy be paid out of his personal estate, the real estate was held not to be charged, even though the personal estate turned out to be insufficient, and the testator must have known it would be. *Hibler v. Hibler* (1895) 104 Mich. 274. The basis of the decision in the principal case was the fact that, in connection with the language and the general scheme of the testator, it was evident that the expression "personal estate" was used to indicate an intention that the entire estate should be converted into money for the payment of legacies. Though ordinarily the words "personal estate" have a fixed and definite meaning, this case may be justified on the above ground.

J. I. S.

WILLS—DESIGNATION OF BENEFICIARIES—REPUGNANCY OF PROVISIONS—EXCLUSION FROM BENEFITS UNDER WILL.—*IN RE CLARKE* (1916) 161 N. Y. S. 484.—The second clause of the testator's will read as follows: "Inasmuch as my eldest son, E., has during my life received so much of my estate as would be equal to or greater than the share hereinafter bequeathed to his brothers, I make no provision for him by this will." There were later provisions which directed one-quarter of a trust fund to be paid to each of the testator's three sons other than E. and to P., the son of E., at P's majority. In case P. should die without issue, the entire estate was to be divided into three equal parts, and paid to the three sons above mentioned; and if any of the three sons should die without issue, his share was to be divided among "his brothers him surviving" and said P. and the issue of any brother that may have died before him. *Held*, that the one-quarter share of one of the three sons mentioned, dying without issue, should be divided equally among P. and the three brothers, including E., in disregard of the second clause quoted above. *Cochrane and Lyon, JJ., dissenting.*

The majority of the court, as well as the dissenting judges, found that the scheme of the testator was to attain substantial equality in the division of his estate among his heirs. The former, however, held that there was a repugnancy between the two clauses in question. One ground on which the court held that E. was entitled to a share in his father's estate was, that, where there is an irreconcilable conflict, the later clause will prevail as being the latest expression of the testator's intention. *In re Bates* (1893) 159 Mass. (N. E.) 252; *Foster v. Stevens* (1906) 146 Mich. 131. This rule applies only where the later clause is as plain and decisive as the first. *Adams v. Massey* (1906) 184 N. Y. 62. The main ground on which the court relied was, that only by allowing E. to take a share, would the testator's intention of equality among his children be carried out. On the other hand, as the minority pointed out, P., the son of E., was provided for in place of E. by the testator in order to bring about his scheme of equality. Furthermore, in view of the second cause, if the testator intended E. to share in the event of the death of a brother, it seems probable that he would have made a provision expressly mentioning E.

J. I. S.

WORKMEN'S COMPENSATION—HEARSAY EVIDENCE—DECLARATIONS OF INJURED PERSON.—*CARROLL V. KNICKERBOCKER ICE CO.* (1916) 113 N. E. (N. Y.) 507.—The plaintiff, in seeking an award for injuries which resulted in the death of her husband, offered as her sole evidence the declarations made by the deceased to herself and the attending physician shortly before his death. Held, that under the Workmen's Compensation Law of 1914, such hearsay evidence was admissible, but insufficient to raise an issue of fact, where opposed by direct testimony of eye-witnesses to the event. *Seabury, and Pound, JJ., dissenting.*

The general rule excluding hearsay evidence has been followed in a long line of cases in the above jurisdiction prior to the Workmen's Compensation Act of 1914. *Waldele v. N. Y. C. & H. R. Ry. Co.* (1884) 95 N. Y. 274; *Greenfield v. People* (1881) 85 N. Y. 88; *People v. Davis* (1874) 56 N. Y. 95. Sec. 68, however, of that act provides that the Workmens' Compensation Commission "shall not be bound by common law, or statutory rules of evidence, or technical, or formal rules of procedure . . . to ascertain the substantial rights of parties." As no jury is employed in such cases it would seem proper that the technical rules of hearsay evidence should be relaxed, even apart from statutory regulation. Accordingly, it is not necessary, as indeed not possible, to bring the declaration in the principal case within the exception admitted on the score of *res gestae*. For the rule as to *res gestae* see *State v. Morrison* (1902) 64 Kan. 669; *Commonwealth v. Werntz* (1894) 161 Pa. St. 591; Wigmore, *Evidence*, Vol. III, sec. 1749. But a distinct and interesting limitation on the probative value to be accorded such evidence, even though admissible, is found in the court's holding as a matter of law that it cannot be considered sufficient to oppose any substantial testimony offered by eye-witnesses to the event. The dissent with much reason, in view of the nature of the tribunal, objects to this dogmatic restriction.

L. W. B.